

REMARKS

Claims 1-25 remain pending. In the Office Action¹, the Examiner rejected claims 1-25 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0078962 to Fabbriatore et al. ("*Fabbriatore*"). Applicants respectfully traverse the Examiner's rejection. As evidence by the attached declaration under 37 C.F.R. § 1.131, *Fabbriatore* is not a proper reference under 35 U.S.C. § 102(e).

Applicants have made repeated, unsuccessful attempts to contact Inventor Lewis Curtis. Inventor Lewis Curtis can no longer be reached using the contact information available. As M.P.E.P. § 715.04 instructs,

[W]here it is shown that a joint inventor is deceased, refuses to sign, or is otherwise unavailable, the signatures of the remaining joint inventors are sufficient. However, the affidavit or declaration, even though signed by fewer than all the joint inventors, must show completion of the invention by all of the joint inventors of the subject matter of the claim(s) under rejection. In re Carlson, 79 F.2d 900, 27 USPQ 400 (CCPA 1935).

The attached declaration is signed by inventor John Crupi and shows completion of the invention by all of the joint inventors of the subject matter of the claims under rejection. See attached Declaration under 37 C.F.R. § 1.131, Exhibit A, and Exhibit B.

For at least this reason, Applicants respectfully submit that the Examiner's rejection of claims 1-25 under 35 U.S.C. § 102(e) as being anticipated by *Fabbriatore* is improper and should be withdrawn.

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

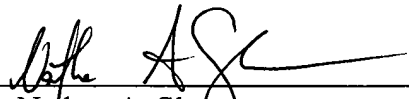
In view of the foregoing remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: September 1, 2005

By: 
Nathan A. Sloan
Reg. No. 56,249

Attachments: Declaration Under 37 C.F.R. § 1.131 by inventor John Crupi.